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VIA EFILING

July 28, 2008

Mr. Charles L.A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
101 Executive Center Dr., Suite 100
Columbia, SC 29210

**Re: Rulemaking Regarding Certain Transportation Regulations and Regulation 103-805 -
Notice of Drafting Filed with the South Carolina Legislative Council
Docket No. 2007-445-A**

Dear Mr. Terreni:

On January 31, 2008 the South Carolina Office of Regulatory Staff ("ORS") filed comments in the above referenced Docket concerning proposed revisions to Regulations 103-102 (as revised 103-114), 103-133(7)(A)(7) and 103-199.5. On or about June 13, 2008 the Public Service Commission of South Carolina filed proposed changes to the above referenced transportation regulations as well as Reg. 103-805 for publication in the State Register. Below are the comments of ORS with regards to the proposed changes to the Commission's transportation regulations and regulation 103-805.

ORS appreciates the opportunity to comment and plans to participate in the hearing before the Commission concerning these proposed changes on September 10, 2008.

Sincerely,


Jeffrey M. Nelson

1. Regulation 103-133 (7)(A)(7) – Drug Testing for Passenger Carrier Drivers.

ORS agrees with the proposed addition of Regulation 103-133(7)(A). In addition to the language proposed by the Commission, ORS recommends that the following language (in bold) be added to the regulation:

103-133(7)(A)(7). Drug **and Alcohol** Testing for Passenger Carrier Drivers. All carriers must implement a verifiable drug **and alcohol** testing program for drivers. Pre-employment, post-accident, and random drug and alcohol screens shall be mandatory.

The selection of drivers for random drug **and alcohol** testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with driver's Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Each driver selected for random drug **and alcohol** testing under the selection process used, shall have an equal chance of being tested each time selections are made. **Either drug or alcohol or both tests may be designated under the selection process. The minimum annual percentage rate for random alcohol testing shall be 10 percent of the average number of driver positions. The minimum annual percentage rate for random controlled substances testing shall be 50 percent of the average number of driver positions.** Further, each driver selected for drug and alcohol testing shall be tested during the selection period.

2. Regulation 103-114.

ORS agrees with the Commission's suggested additional language to 103-114. Additionally however, ORS believes that it is essential to also add a Paragraph 27 to Regulation 103-102 to further define the term "for compensation" as provided in S.C. Code Ann. § 58-23-30. Although the statute does provide some definition of the term, the failure of specificity in this definition has left a loop-hole for movers which provide "free" transportation with the rental of a mobile storage "pod." While the Commission's addition to Regulation 103-114 will be of additional assistance in regulating the transportation of household goods by mobile storage containers, it fails to close the loop hole currently used by container companies which claim to be unregulated because they allegedly transport or move the containers with household goods for free, or without compensation. ORS therefore requests that the Commission consider adding both the language that it has proposed in Reg. 103-114 as well as adding the following to Reg. 103-102:

(27) For Compensation. "For Compensation" includes payment made to any person, corporation or legal entity for the use or rental of any form of temporary or portable storage unit or container when such payment shall include or entitle the purchaser of such to the transportation of the unit or container or its contents over public highways in this state. Any contracts, agreements, rentals or sales by the provider of such temporary units or portable containers which assert to provide 'free' transportation shall be deemed a subterfuge for the purpose of avoiding regulation as defined in the statute."

3. Regulation 103-199.5 "Adjustment of Bills." (Item No.3)

ORS recommends approval of the language proposed by the Commission.

4. 103.805 Representation

With regard to subsection (D) entitled “Waiver of Regulation”, the Commission may want to consider whether this portion of the proposed regulation needs to be filed with the South Carolina Supreme Court at the same time it is filed with the Legislative Council.

In re unauthorized practice of law rules proposed by the South Carolina Bar, 309 S.C. 304, 306, 422 S.E.2d 123, 124 (1992) held that “state agencies may by regulation, authorize persons not licensed to practice law in South Carolina, including laypersons, Certified Public Accountants (CPAs), attorneys licensed in other jurisdictions and persons possessing Limited Certificates of Admission, to appear and represent clients before the agency.”

In this opinion, the South Carolina Supreme Court stated that a copy of the proposed regulation shall be filed with the Supreme Court Clerk at the same time it is filed with the Legislative Council. ORS also notes that Rule 404 has been revised since this opinion was published in 1992.

ORS recommends that the Commission file the proposed regulation with the Supreme Court Clerk.